Supreme Court, U.S.
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Case No. 91-433

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

FLETCHER J. CAMPBELL,

Petitioner,

vs.

**GRIEVANCE ADMINISTRATOR,
STATE OF MICHIGAN
ATTORNEY GRIEVANCE COMMISSION,**

Respondent.

Petition For Writ of
Certiorari To The
Michigan Supreme Court

RESPONDENT MICHIGAN ATTORNEY GRIEVANCE COMMISSION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

and

APPENDIX

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91-1

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE MICHIGAN ATTORNEY DISCIPLINE BOARD AND HEARING PANEL PROPERLY EXERCISED THEIR AUTHORITY IN IMPOSING DISCIPLINE IN THIS CASE?

II. WHETHER THE MICHIGAN ATTORNEY DISCIPLINE BOARD AND THE MICHIGAN SUPREME COURT ERRED IN DENYING PETITIONER'S REQUEST FOR RELIEF FROM THE ORDER OF DISCIPLINE IMPOSED IN THIS CASE?

III. WHETHER THE MICHIGAN ATTORNEY DISCIPLINE BOARD ERRED IN IMPOSING A THREE YEAR SUSPENSION OF PETITIONER'S LICENSE TO PRACTICE LAW?

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STATEMENT OF OBJECTIONS TO JURISDICTION

The Attorney Grievance Commission denies that Petitioner has alleged sufficient jurisdictional grounds for the issuance of a Writ of Certiorari.

This Court's rules state that "review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only where there are special and important reasons therefore." Sup. Ct. R. 10.1.

The petition filed in this matter fails to satisfy this threshold requirement. It raises no constitutional questions of any import. Petitioner's references to constitutional provisions are just that -- references. He fails to fully discuss or explain how constitutional principles were violated as applied to the facts in this case. Nor is there any issue in the case involving the

construction or application of a federal statute. Neither the Michigan Attorney Discipline Board nor the Michigan Supreme Court have decided a federal question in a way that conflicts with a decision of another state court of last resort or a United States Court of Appeals. Nor has the court decided an important question of federal law which should be settled by this court or which conflicts with applicable decisions of this court.

Although Petitioner attempts to cast his arguments in constitutional terms, the Petitioner's claims of error do not involve constitutional questions but purely questions of state law and procedure concerning attorney disciplinary proceedings. Petitioner asks this court to substitute its judgment for that of the Michigan Supreme Court in determining how attorney disciplinary proceedings will be conducted. Petitioner has cited no basis for further review by this Court.

COUNTERSTATEMENT OF FACTS

A. Disciplinary Proceedings

On February 17, 1988 and May 25, 1988, the Michigan Attorney Grievance Commission, the agency authorized by the Michigan Supreme Court to investigate and prosecute allegations of attorney misconduct, filed a formal complaint against Petitioner, Fletcher J. Campbell, with the Michigan Attorney Discipline Board, the agency empowered to adjudicate allegations of misconduct. The complaints charged Petitioner with violating certain rules of professional responsibility. The cases, formal complaint ADB No. 25-88 and formal complaint ADB No. 133-88, were consolidated and assigned to a hearing

panel. After a pre-hearing conference, the panel concluded that the matter would proceed more expeditiously if a master were appointed to receive evidence and file a report with his findings and conclusions concerning the charges of misconduct. Mich. Ct. Rule 9.117. (Respondent's Appdx. pp. 26-27) Pursuant to the panel's request, the Michigan Attorney Discipline Board appointed a master on December 23, 1988. (Respondent's Appdx. pp. 6-9).

Petitioner objected to the appointment of a master. On February 17, 1989, an order was entered by the Board denying Petitioner's request for relief from the order appointing a master. (Respondent's Appdx. pp. 10-13). The Board determined that appointment of a master was not contrary to the powers and duties granted to it by Michigan Court Rule 9.110(D)(3).

The Mason Matter

In ADB No. 25-88 (hereafter referred to as the Mason matter), it was found that Petitioner charged clearly excessive fees and collected those fees without obtaining the prior approval of the probate court or the affected parties, and violated a restraining order issued by the court prohibiting Respondent from transferring or spending the monies he collected as fees.

The evidence established that on September 25, 1983, Petitioner was retained by Ophelia Mason to institute conservator and guardianship proceedings on behalf of her elderly neighbor, Bessie Irwin. A retainer agreement was signed. Pursuant to the agreement, Petitioner received a $600.00 "non-refundable" fee. Petitioner testified that the $600.00 was to cover all related out-of-court work necessitated by the probate proceedings.

For each court appearance, including the filing of court documents, he was to receive $350.00. Under this fee agreement, Petitioner was paid monies totaling $1,956.00.

Petitioner did not institute probate proceedings until April 26, 1984. The hearing on the guardianship and conservatorship petitions was held on June 26, 1984. Ophelia Mason was appointed as the guardian and conservator of Bessie Irwin.

After the hearing on June 26, 1984, Ms. Mason met with Petitioner at his office. At the meeting, Ms. Mason signed a document entitled "Power of Attorney and Assignment", (Ex. 8) which she testified that she did not understand. The "Power of Attorney and Assignment" provided:

1. An assignment of "monies being held by the Estate of Bessie Irwin" to Respondent;

2. A lien on the assets of the estate for an additional fee equal to one-third of any amounts received by the estate; and,

3. A "vested interest" in Respondent in amounts received by said estate, notwithstanding Mason's right to "seek or obtain other counsel to intercede in the Estate's behalf".

(Respondent's Appdx. pp. 1-5).

Petitioner testified that he asked Ms. Mason to sign the "Power of Attorney and Assignment" because the conditions under the original retainer had been fulfilled and because Ms. Mason claimed she could not afford his fees under that contract. Petitioner claimed he believed Ms. Irwin's assets to be $8,500.00, consisting of $4,000.00 in cash and a house valued at $4,500.00. However, Ms. Irwin's April, 1984 bank statement, offered by Petitioner, showed that she had $8,901.32 in her bank account alone.

On November 16, 1984, Comerica Bank Account No. 0371-05020-4, in the name of the Estate of Bessie Irwin, was opened. Ms. Mason testified that the account was opened at Petitioner's direction. It was into this non-interest bearing account that monies amounting to approximately $200,000.00 from the sale of securities belonging to Ms. Irwin were deposited.

On December 5, 1984, pursuant to the "Power of Attorney and Assignment", Petitioner charged and collected $66,836.17 from Ms. Mason by means of a check drawn on the Bessie Irwin account. The money came from the sale of the securities. This sum was in addition to the $1,956.00 previously collected from Ms. Mason. The monies Petitioner collected as his fees totaled $68,792.17. The fees were taken without the prior approval of the probate court as required by Michigan law.

On December 4, 1984, the same day the $66,836.17 check was received from Ms. Mason, Petitioner negotiated the check at Comerica Bank, which is shown by the back of the check. Petitioner's Statement of Services, filed with the probate court, reflects that Petitioner kept $11,000.00 in cash of the proceeds of the $66,836.17 check. The remaining $55,836.17 was deposited into his professional account entitled "FJC Attorneys Group PC", Account No. 0331-04296-0, which he maintained at Comerica Bank. Petitioner was the sole signator on the account.

Petitioner denied depositing the proceeds of the check into the account. However, the back of the $66,832.17 check references his account number. Further, the bank statement on his account shows a deposit on December 5, 1984 in the amount of $55,836.17.

On January 31, 1985, Petitioner was served personally with a temporary restraining order issued that date, restraining him from "transferring, spending, encumbering, or in any way disposing of" money from the estate of Bessie Irwin. On February 1, 1985, after being served with the restraining order, Petitioner withdrew the sum of $9,000.00 from his bank account where $55,836.17 of the proceeds of the $66,836.17 check had been deposited.

Petitioner remained an attorney of record in the Irwin estate until February 7, 1985. When an objection was made concerning Petitioner's fees, the probate court ordered Petitioner to reimburse the estate in the amount of $62,738.17.

Appeals were taken in the probate case. On May 27, 1987, the Michigan Court

of Appeals issued an opinion determining that Petitioner was entitled to fees and costs in the amount of $1,657.00 for services rendered in the Estate of Bessie Irwin. According to the opinion, Petitioner was to reimburse the estate the excessive fees. An order was entered on August 29, 1989, by the probate court compelling Petitioner to forthwith return $65,179.17, plus interest, to the estate. As of the conclusion of the disciplinary hearings in this matter, Petitioner had only returned $1,357.00 to the estate.

The Wright Matter

In ADB No. 133-88 (hereafter referred to as the Wright matter), it was found that Petitioner, 1) failed to deposit the funds collected on behalf of a client into an identifiable bank account; 2) misappropriated the funds of a client;

and, 3) knowingly provided false information to a volunteer investigator (legal counsel) assigned by the Attorney Grievance Commission to investigate a grievance filed against Petitioner.

Shirley A. Wright retained Petitioner to prosecute an insurance claim against the Group Insurance Company of Michigan for damages sustained in a fire loss. On March 10, 1976, a civil complaint was filed under the case name, Wright v Group Insurance Company in the Wayne County Circuit Court, State of Michigan. On June 11, 1981, a judgment was entered, awarding Wright $7,527.55. A subsequent order was entered decreasing the judgment to $7,428.87. The insurance company appealed the judgment.

On August 10, 1981, Petitioner instituted a garnishment action to collect

on the judgment rendered in Wright v National Bank of Detroit. On September 16, 1981, Petitioner endorsed and cashed a $7,428.87 check he received pursuant to a garnishment filed with the National Bank of Detroit. The check was made payable to the order of Shirley A. Wright and Petitioner and was later endorsed by both.

Petitioner negotiated the $7,428.87 check at his bank, the National Bank of Detroit. He did not deposit the check directly into a trust account as required by Michigan court rule. However, Petitioner, at some later time deposited $3,583.89 of the proceeds of said check into his Trust Account No. 0096187-44. A second deposit of $2,828.98 went into Petitioner's Office Payroll Account No. 086493-64. The remaining monies were kept by Petitioner as cash.

It was determined by the master and hearing panel that Petitioner misappropriated the money that was deposited into the trust and payroll accounts. By month's end, the balance in his trust account was $1,197.75, far lower than the amount to which Ms. Wright was entitled as recovery from the lawsuit. By the end of April, 1982, the balance in the trust account was $198.02. On September 17, 1981, the balance in Petitioner's payroll account was $1,221.66. By month's end, the balance was $383.45. Ms. Wright was not paid any money during this period.

The appeal in the civil case continued its passage through the court system. On September 19, 1986, following retrial, a judgment was again entered for Ms. Wright. Petitioner claimed fees of $2,933.85 and waived costs. On February 6, 1987, Ms. Wright received the sum of $4,734.30 from Petitioner.

On December 29, 1986, Ms. Wright filed a Request for Investigation against Petitioner with the Attorney Grievance Commission, alleging that Petitioner failed to remit the judgment proceeds.[1] The file was referred to volunteer investigator, Attorney Ronald Karp.[2] On April 13, 1987, Petitioner met with Mr. Karp. Mr. Karp testified that, at the meeting, Petitioner represented:

> That he held $7,428.87 in the form of cash from September, 1981 until disbursed to Wright in February, 1987, so that they would not be subject to garnishment.

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1. A Request for Investigation is a complaint or grievance filed against an attorney.

2. The Grievance Administrator may appoint volunteer legal counsel to investigate allegations of professional misconduct. Mich. Ct. Rule 9.109(C).

On November 10, 1989, the master filed his report setting forth his findings on the charges. (Petitioner's Appdx. pp. 26-74) Neither party filed objections to the master's findings. On March 1, 1990, the panel filed its Report and Order. (Petitioner's Appdx. pp. 14-25) The panel adopted the master's report.

Petitioner was found to have charged and collected clearly excessive and illegal fees, failed to obey court orders, misappropriated client funds, and having made a false statement in connection with a disciplinary investigation in violation of the Michigan Rules of Professional Responsibility. Based on these findings, the hearing panel revoked Petitioner's license to practice law.

On March 20, 1990, Petitioner filed a Petition for Review with the Attorney Discipline Board raising the claims set forth in his present Petition.

On October 25, 1990, the Board entered its opinion affirming the Panel's findings of misconduct, but reducing the hearing panel's order of revocation to a three year suspension. (Petitioner's Appdx. pp. 4-13).

On March 14, 1991, Petitioner filed an Application for Leave to Appeal with the Michigan Supreme Court raising the issues set forth in his Petition for Writ of Certiorari. On March 22, 1991, the supreme court denied the Petitioner's application. The Michigan Supreme Court also denied Petitioner's motion for reconsideration of the court's March 22, 1991 order. (Petitioner's Appdx. pp. 75-76).

ARGUMENT

I.

THE MICHIGAN ATTORNEY DISCIPLINE BOARD AND HEARING PANEL PROPERLY EXERCISED THEIR AUTHORITY IN IMPOSING DISCIPLINE IN THIS CASE.

The constitutional power of the

Michigan Supreme Court to discipline attorneys is granted by Mich. Const. art. VI Sec. 5. (Petitioner's Appdx. pp. 83) Michigan Court Rule 9.108(A) states:

> a) Authority of Commission. The Attorney Grievance Commission is the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.

(Respondent's Appdx. pp. 18-21).

The Attorney Grievance Commission is a judicially-created investigatory and prosecutorial body and is empowered to conduct inquiries in connection with the conduct of attorneys. The Grievance Administrator and Deputy Grievance Administrator are appointed by the Michigan Supreme Court. The Grievance Administrator has the power and duty to "investigate alleged misconduct of attorneys, including serving a request for

investigation in his own name." Mich. Ct. Rule 9.109 (Petitioner's Appdx. pp. 67) The Michigan Attorney Discipline Board is appointed by the supreme court to adjudiciate these allegations of misconduct. Michigan Court Rule 9.110(A) states:

> A) The Attorney Discipline Board is the adjudicative arm of the Supreme Court for discharge of its exclusive constitutional responsibility to supervise and discipline Michigan attorneys.

(Respondent's Appdx. pp. 22-23).

Both the Grievance Commission and Discipline Board are subject to the supervisory control of the Michigan Supreme Court and as such, the proceedings are judicial in nature. Erdmann v. Stevens, 458 F.2d 1205 (2d Cir. 1972). See also, Matter of Grimes, 414 Mich. 483, 326 N.W.2d 380 (1982); Falk v. State Bar of Michigan, 411 Mich. 63, 305 N.W.2d 201 (1981); Schlossberg v. State Bar Grievance

Board, 388 Mich. 389, 200 N.W.2d 219 (1972); Ayres v. Hardaway, 303 Mich. 589, 597, 6 N.W.2d 905 (1942); In re Hartford, 282 Mich. 124, 275 N.W. 791 (1937); In the Matter of Mills, an Attorney, 1 Mich. 392, 393-4 (1850).

Petitioner's claim that there is no judicial intervention in the Michigan Attorney disciplinary proceedings is inaccurate. The Michigan Court Rules governing attorney disciplinary proceedings, adopted by the Michigan Supreme Court, evidence the court's substantial judicial involvement in the disciplinary process. Pursuant to the Rules, the Michigan Supreme Court may order discipline including, revocation, suspension, reprimand, probation and restitution. Mich. Ct. Rules 9.106. (Respondent's Appdx. pp. 16-17). A disciplinary proceeding, whether at the investigative or adjudicative phase, is

subject to the direct superintending control of the Michigan Supreme Court. Mich. Ct. Rule 9.107(A). (Respondent's Appdx. p.18) Both the Grievance Commission and the Discipline Board clearly maintain a status far different from mere administrative agencies.

Petitioner's claim that Michigan Attorney Discipline proceedings are "non-judicial" because appeals of Attorney Discipline decisions can only be taken by leave as opposed to appeal by right, mischaracterizes the role of the Michigan Supreme Court in disciplinary proceedings.

First, each discipline case appealed to the Michigan Supreme Court is reviewed by the Court in that the decision to grant or deny leave is based on a review of the record and consideration of

the issued involved.[3] Further, the number of cases in which leave is granted by the Michigan Supreme Court is not an accurate measure of the court's involvement in the discipline process since the court can, and does, modify actions taken by the Board in lieu of granting leave. The Petitioner, in this case, filed an application for leave to appeal to the Michigan Supreme Court, but was denied leave.[4] The Michigan Supreme Court's judicial role is substantial and clearly defined by court rule.

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3. When an application for leave to appeal is filed, the entire original Attorney Discipline Board file is transmitted to the Michigan Supreme Court for review.

4. Matter of Fernando Edwards, No. 87328, Mich. Sp. Ct., filed 12/05/90, the court denied leave to appeal but reduced an order of revocation issued by the Board to a suspension of three years.

The Michigan Supreme Court has always maintained strict judicial control over attorney disciplinary matters and has always reserved final authority in discipline cases to itself. Michigan Court Rule 9.110(A) speaks specifically of the Court's "exclusive constitutional responsibility to supervise and discipline Michigan attorneys." (Respondent's Appdx. p. 22) This responsibility was further recognized in Matter of Grimes:

> It is this Court, however, that has ultimate responsibility to oversee the conduct of the approximately 21,000 members of the State Bar, and keep unsullied the reputation of the profession. When an order of the Attorney Discipline Board is appealed, therefore, the Supreme Court may make any order it deems appropriate, including dismissing the appeal.

414 Mich. 448, 489-490, 326 N.W. 2d 380, 383 (1982). (Emphasis added).

The Michigan disciplinary process is an ordered system in which hearings are conducted and procedural due process is provided to each attorney charged with professional misconduct. The hearing itself is adversarial in nature and the rules governing practice and procedure in a non-jury civil action apply to proceedings before a hearing panel or master. Michigan Court Rules 9.115(A). (Petitioner's Appdx. pp. 97-98)

The Board acted within its specifically delegated authority in adjudicating this matter and imposing appropriate discipline.

ARGUMENT

II.

THE MICHIGAN ATTORNEY DISCIPLINE BOARD AND THE MICHIGAN SUPREME COURT DID NOT ERR IN DENYING PETITIONER'S REQUEST FOR RELIEF FROM THE ORDER OF DISCIPLINE IMPOSED IN THIS CASE.

Petitioner has raised a number of

claims relating to the disciplinary hearing held in this matter. Petitioner's arguments have all been considered by the Attorney Discipline Board and the Michigan Supreme Court and have been held to be without merit.

A. Alleged Prosecutorial Misconduct

Petitioner has raised a claim that counsel for the Michigan Attorney Grievance Commission engaged in prosecutorial misconduct by altering an exhibit. Petitioner was allowed discovery of the documents the Grievance Administrator was likely to offer into evidence, including access to a copy of a check issued by the National Bank of Detroit, for $7,428.87, dated September

16, 1981.[5] The copy of the check had a handwritten note placed upon the page. The handwriting did not appear on the face of the check but was written elsewhere on the page. The note stated:

> "Checked Banks [sic] computer there wasn't [sic] an account in the name of Fletcher Campbell at the time above check was presented. "No Deposit". Check had to have been cashed". Per Anthony Morales NBD Security. 2-10-88.

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5. Petitioner's statement that the Grievance Commission had "secretly secured" a copy of the check implies that the method by which the AGC obtained the check was improper. However, Michigan Court Rule 9.114(C)(1) permits the Commission to issue a subpoena for production of documents before the administrator or investigator concerning matters then under investigation. (Petitioner's Appdx. pp. 97)

Because the writing was not part of the check, and constituted hearsay, a copy of the check was made so that the writing did not appear. Undoubtedly, had the Grievance Administrator offered into evidence a copy of the page on which the writing did appear, Petitioner would then have claimed the admission of the hearsay statement as prosecutorial misconduct. The master correctly dismissed Petitioner's allegations.

More importantly, Petitioner fails to advise this Court that he obtained discovery concerning the check on July 11, 1988. Additionally, Petitioner was notified of the Grievance Administrator's intention to submit a redacted version of the same check in its Request for Admissions filed on August 30, 1988. Petitioner never answered the Request for Admissions which called upon him to admit the authenticity of the check

at issue.[6]

The evidence established that Petitioner maintained accounts at the National Bank of Detroit in his professional corporation's name at the time the check was negotiated. The check was not deposited directly into one of the accounts maintained by Petitioner. It was the Grievance Commission's position throughout the proceedings that Petitioner presented the check to National Bank of Detroit, negotiated it, received the proceeds, deposited a portion of the proceeds into two accounts and kept the remainder in cash.

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6. Respondent objected to the Request for Admissions as being outside the scope of discovery rules. However, Michigan Court Rule 9.115(F)(4)(d) allows a hearing panel to obtain admissions or otherwise narrow the issues presented. (Petitioner's Appdx. pp. 99).

The Petitioner fails to point out how the admission of the exhibit with the hearsay redacted was prejudicial to his case or misled the master hearing the case.

Further, the Petitioner had an opportunity to call Anthony Morales, (the person whose handwritten note appeared on the check) as a witness during the proceedings, but chose not to do so. The Petitioner has failed to demonstrate how redaction of Mr. Morale's handwritten note resulted in any detriment to him.

Petitioner's second allegation of prosecutorial misconduct, arises from his claim that counsel for the Grievance Administrator caused an exhibit containing hearsay statements (Exhibit #56) to be entered into evidence.

During the investigation of the Wright matter, the file was assigned to Volunteer Investigator, Ronald Karp. Mr. Karp was an attorney who conducted an investigation into the allegations made by

Shirley Wright, the complainant who file the Request for Investigation with the Attorney Grievance Commission. Upon completion of his investigation, Attorney Karp filed a written report with the Attorney Grievance Commission. The report primarily contained a chronology of the history of the case and statements made by Petitioner. The report also contained some hearsay statements of Complainant Shirley Wright and attorney William Taylor. Mr. Taylor testified during the disciplinary hearing before the master. During the course of the hearing, the report of Volunteer Investigator Karp (Exhibit #56) was offered into evidence by counsel for the Grievance Administrator. Petitioner objected to the admissibility of hearsay statements contained in Exhibit 56, except for those statements made by Petitioner to the investigator, Mr. Karp.

The master indicated that the hearsay portions of the report should be redacted, but that the report could be otherwise admitted. Counsel for the Grievance Administrator requested that Petitioner and his attorney meet during the recess to redact the report, but they failed to do so. The report, however, was then included in unredacted form because of the failure of Petitioner and his counsel to agree to the redaction. However, it appears that the master did not consider the report in his findings of misconduct concerning the count charging a False Statement In Connection with a Request for Investigation, but instead, relied upon the testimony of witnesses and other admissible evidence presented at the hearing. (Report of Master, page 15; Petitioner's Appdx. pp. 69-70). On page 15 of the Report, the master stated:

C) Count III--False statements made in connection with a Request for Investigation.

1. Ronald Karp, an attorney, was appointed by the Attorney Grievance Commission to serve as a Volunteer Investigator regarding a Grievance filed by Shirley Wright against Respondent.

2. As part of his duties, Karp interviewed Respondent in April of 1987.

3. Karp prepared a Report embracing his findings, but the document was not introduced as an exhibit at the hearing.

4. Respondent advised Karp that he retained all of the proceeds derived from the judgment in cash, at Wright's request.

5. Since Shirley Wright did not testify, it cannot be shown that Respondent falsely informed Investigator Karp that Wright asked him to hold the funds in cash in order to avoid a garnishment.

6. Respondent falsely reported to Investigator Karp that he held the proceeds derived from the cashier's check of September 16, 1981, in cash. The testimony of Mary Sanders and the exhibits related to the transactions of September 16, 1981, along with other bank exhibits, reveal that Respondent deposited $6,412.87 of

> **the $7,428.87 in two accounts, receiving the remainder in cash. Subsequent to that transaction, he withdrew all but $198.02 from his trust account. Thus, Respondent did not keep the proceeds of the garnishment check at his office, as he represented to Karp.**
>
> CONCLUSION: Respondent committed professional misconduct by knowingly providing false information to a Volunteer Investigator of the Attorney Grievance Commission who was investigating a grievance filed against Respondent.

(Petitioner's Appdx. pp. 69-71)

The findings of misconduct in this case were based on admissible and competent evidence. Petitioner's claim of error is without merit.

B. Speedy Hearing

Petitioner claims that the order of discipline in ADB Case No. 25-88 should be vacated because the hearing was not held within 56 days after the filing of the formal complaint. However, the relevant portion of MCR 9.111 states:

> (B) Powers And Duties. A hearing panel shall do the following:
>
> > (1) Hold a public hearing on a complaint... within 56 days after the date the complaint is filed with the board... A hearing must be concluded within 91 days after it is begun, unless the board grants an extension for good cause.

(Petitioner's Appdx. pp.96) (Emphasis added)

Clearly, the rules provide that, if good cause has been shown, a hearing need not be held or completed within the cited guidelines.

Other provisions in the Rules allow for flexibility in hearing and concluding disciplinary cases. For good cause, it is within a panel's discretion to grant one adjournment per party. Mich. Ct. Rule 9.115(F)(1). (Respondent's Appdx. p. 25) The rules also grant panels discretion to order a pretrial hearing for

the purpose of narrowing the issues. Mich. Ct. Rule 9.115(F)(4)(d). (Petitioner's Appdx. 98-99).

The panel, in the instant matter, granted the Grievance Administrator one adjournment for the reason that an expert witness was unable to attend the first hearing date for medical reasons. Further, both parties filed preliminary motions, such as motions to strike, and motions for summary disposition. Petitioner, himself, filed two separate motions to disqualify panel members. On February 1, 1989, after the appointment of a master, Petitioner sought, and was granted, a stay while the Attorney Discipline Board considered his Motion for Relief from Order Appointing Master. Thereafter, Petitioner again sought, and was granted, an adjournment. In view of the many motions filed by the parties, and

the complex nature of the issues, the proceedings were conducted as expeditiously as possible. Petitioner has failed to specify any harm from the delay.

The Michigan Supreme Court on a similar issue -- the timeliness of a hearing panel's report -- held that the rule requiring the filing of a report within 30 days of the conclusion of a disciplinary proceeding should be regarded as a goal and not jurisdictional. The Court found that it would be unreasonable and unfair to both sides to impose a rigid rather than a reasonable time limitation. State Bar Grievance Administrator v Posler, 393 Mich 38, 222 N.W.2d 511 (1974). See also, State Bar Grievance Administrator v Donigan, 403 Mich 172, 267 N.W.2d 909 (1978);

While disciplinary proceedings should be expeditious, there are certain cases which cannot be concluded within the

strict guidelines. The instant case involved such a situation.

C. Consolidation of Formal Complaints

Petitioner claims he was denied due process and a fair trial when the Attorney Discipline Board consolidated Formal Complaints ADB Case Nos. 25-88 and 133-88. It should be noted that, throughout the course of the disciplinary proceedings before the panel, Petitioner never objected to the consolidation or moved for separate trials. Therefore, Petitioner has waived any objection to the consolidation of the two matters.

The Board assigned both Formal Complaints to Wayne County Hearing Panel #11. The Board has the power to assign matters for hearing. Mich. Ct. Rule 9.110(D). (Petitioner's Appdx. pp.95) Having been assigned a matter for hearing,

the panel had the power and duty to set the time, place, and date of hearing. Mich. Ct. Rule 9.115(G). (Respondent's Appdx. pp. 25-26)

On May 26, 1988, a Consolidated Notice of Hearing was issued by the clerk of the Board, embodying the panel's order as to the time, date, and place of hearing on said matters and further providing notice of the consolidation. The clerk had the duty to give notice of the order of the Board. Mich. Ct. Rule 8.105(D). (Respondent's Appdx. p. 14)

The consolidation of the two cases was appropriate. The Michigan rules governing practice and procedure in a non-jury civil action apply generally to a proceedings before a hearing panel. Michigan Court Rule 9.115(A). (Petitioner's Appdx. pp. 97-98) Michigan

court rules provide that when actions involving a substantial and controlling common question of law or fact are pending before the court, it may order the actions consolidated. Michigan Court Rule 2.505(A). (Petitioner's Appdx. p.90) [7]

Consolidation is largely a matter of convenience and the hearing panel had considerable discretion in this area and may have ordered consolidation for its own benefit. Wilson v. Ex-Cell-O Corp, 368 Mich. 61, 117 N.W. 2d 1984 (1962).

In the Mason matter (ADB No. 25-88), Petitioner was charged with acts of neglect, charging a clearly excessive or illegal fee, violating a ruling of the Michigan Court of Appeals to return unearned fees. He was further charged with violating a temporary restraining

---

7. The Michigan rule is drafted substantially in the language of Rule 42 of the Federal Rules of Civil Procedure.

order issued by a probate court by removing said fees from his bank account, making misrepresentations to a probate court as to the disposition of those fees, and violating an order appointing a receiver. The charges in the Mason case, reflect a pattern of misconduct, involving Petitioner's mishandling of money and engaging in misrepresentation to conceal his misconduct.

In the Wright matter, (ADB No. 138-88) Petitioner was charged with commingling and misappropriating client funds, violating a temporary restraining order by removing the funds from his bank account, and making misrepresentations to the Attorney Grievance Commission regarding the disposition of those funds. Thus, charges in the Wright case, also, indicate a pattern of misconduct involving

the mishandling of client funds and misrepresentation to conceal attorney misconduct. This pattern of misconduct was noted by the panel in its Report. (3/1/90, Report, pg. 4) (Petitioner's Appdx. pp.24) Since the charges in the two cases were similar, the Board did not abuse its discretion in consolidating the two matters. Cohen v. Cohen, 125 Mich. App. 206, 335 N.W. 2d 661 (1983).

Moreover, a substantial and controlling question in this proceeding, as exists in all disciplinary proceedings, is whether the subject attorney is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and as an officer of the court. Mich. Ct. Rule 9.103(A) (Respondent's Appdx. pp. 15-16). To answer this question, it was necessary that the matters be consolidated

so that the hearing panel could properly decide this issue based upon the totality of Respondent's misconduct.

D. Appointment of Master

Respondent's argument that the Attorney Discipline Board had no authority to appoint both a hearing panel and master to determine if Respondent committed professional misconduct is without merit and completely contrary to Michigan Court Rules. Respondent has either ignored or failed to note that Michigan Court Rule 9.117 specifically allows for appointment of a master and a hearing panel to determine allegations of misconduct. Michigan Court Rule 9.117 provides that after a hearing is conducted by a master, he or she must file a report with the hearing panel designated by the Attorney Discipline Board. The panel must determine if the record supports the findings of fact and conclusions of law of

the master and impose discipline if warranted. Michigan Court Rule 9.117. (Respondent's Appdx. pp. 26-27)

Petitioner urges a narrow interpretation of the language in Mich. Ct. Rule 9.110(D)(3) relating to the Board's power and duty to "on the filing of a complaint, assign it to a hearing panel or to a master if it appears that the hearing will be a prolonged one".

When a complaint is filed, one usually cannot tell whether a hearing will be prolonged. It is only upon the filing of an answer, or preliminary motions, that one can make projections whether proceedings will be prolonged. Indeed, it was after the parties filed multiple preliminary motions and an extensive list of witnesses that the Board entered an order on December 23, 1988, appointing a

master for the reason that "the hearing will be a prolonged [one] and the Board has determined that the appointment of a master would be appropriate and will serve the interests of justice." (Respondent's Appdx. p. 7) The appointment of a master was in accord with the goal that "proceedings must be expeditious as possible". Mich. Ct. Rule 9.102(A). The Michigan Supreme Court has stated that Subchapter 9.100 is to liberally construed for the protection of the public, the courts, and the legal profession. Mich. Ct. Rule 9.102. (Respondent's Appdx. pp. 14-15)

Petitioner's claim that the evidence did not sustain a finding of misrepresentation to the Attorney Grievance Commission is also without merit. The evidence established that Petitioner misrepresented certain facts to

the Commission's staff during the course of the investigation. Petitioner stated to the Commission's Volunteer Investigator that he had maintained certain client funds in his office safe. This was later proven to be false. Further, Petitioner lied to the Investigator when he stated that he held the funds in the form of cash. The evidence disclosed that Petitioner had deposited the funds into two of his personal bank accounts.

E. Confidentiality of the Board's Records

Petitioner claims that his due process rights were violated when the Board refused his request for access to the Board's minutes in appointing a master or access to the list of masters.

In rejecting Petitioner's claims, on February 17, 1989, the Board held:

> The Board has determined that the Board's minutes and records pertaining to the appointment of a master constitute confidential files and records of the Board within the meaning of MCR 9.126(D). The Board has determined that the request of the hearing panel for appointment of a master in this case was considered by the Board at a special meeting held on November 9, 1988, at which a quorum was present (Members Gurwin, Green, Zegouras, Doctoroff and Hotchkiss). The Board is not persuaded that maintenance or disclosure of a special "masters list" is required for the Board to exercise its authority to appoint a master. . .

(Respondent's Appdx. pp. 10-13)

The files and records of the Board are generally confidential except for formal pleadings, reports, findings, recommendations, discipline, reprimands, transcripts, and orders resulting from hearings. Mich. Ct. Rules 9.126(C) and (D). (Petitioner's Appdx. pp. 99-101). Disclosure of the minutes of the Board reflecting the deliberations underlying

the appointment of a master is not authorized. Indeed, the deliberations of any court are not generally available.

Petitioner claims that the Board engaged in discrimination in selecting Wayne County Hearing Panel #11. The Board maintains a list of panel members. Panels are chosen on a rotation basis. The race and area of practice by individual panel members are not indicated on any list. To do so would invite charges of bias. Petitioner urges a different procedure -- the selection of panels by race and employment. This argument has been rejected by the Michigan Supreme Court in State Bar Grievance Administrator v Grubbs, 396 Mich 275, 278, 240 N.W.2d 233 (1976).

III.

THE MICHIGAN ATTORNEY DISCIPLINE BOARD DID NOT ERR IN IMPOSING A THREE YEAR SUSPENSION OF PETITIONER'S LICENSE TO PRACTICE LAW.

The findings of misconduct made against Petitioner evidence a pattern of misconduct related to the misappropriation of client funds. In short, Petitioner lied, cheated, and stole to his pecuniary advantage. The findings warrant, at the least, a three year suspension from the practice of law because petitioner presents a danger to the integrity of the legal profession as a whole. The Panel noted the following:

> Mr. Campbell is unable to grasp the seriousness of his misconduct or to fully appreciate the nature of his obligations as an officer of the court. The document prepared by the respondent entitled "Power of Attorney and Assignment:. . .giving him a lien

> on the assets of the estate for a fee equal to one-third (1/3) of the amounts received and giving him a "vested interest" in those amounts was, in our opinion, unconscionable. His continued failure to return the excessive fees to that estate, although ordered to do do, constitutes further evidence of the respondent's failure to fulfill his obligations to his former client or the courts.
>
> The findings. . .that the respondent commingled client funds with his own, misappropriated funds of a client and knowingly provided false information during the course of the Grievance Administrator's investigation constitute acts of misconduct which are sufficiently egregious to warrant substantial discipline. More importantly, those separate acts of misconduct suggests a pattern of misconduct.

(Petitioner's Appdx. pp. 22-24).

Petitioner complains of differential treatment -- that the discipline was more severe than that imposed upon other attorneys similarly situated. The Michigan Supreme Court, however, has stated:

> "[W]e are mindful of the sanctions meted out in similar cases, but recognize that analogies are not of great value. 'As a hypothetical proposition, we find dubious the notion that judicial or attorney misconduct cases are comparable beyond a limited and superficial extent. Cases of this type generally must stand on their own facts.'"

Matter of Grimes, 414 Mich 483, 490, 326 N.W. 2d 380 (1982); quoting State Bar Grievance Administrator v Del Rio, 407 Mich 336, 350 285 N.W. 2d 277 (1979).

Nowhere has the Court indicated more strongly the protective purpose of disciplinary proceedings than in instances involving mishandling of client funds. The Michigan Supreme Court has affirmed the disbarment of an attorney who had commingled and converted estate funds for his own use. State Bar of Michigan v Baun (After Remand), 396 Mich 421 240 N.W. 2d 728 (1976). The court, in Baun, cited with approval the Attorney Discipline Board's holding that:

> The conduct of the respondent and the evidence show a willful disregard of his obligations as a fiduciary and trustee. He refused to take any action toward correcting his conduct until compelled to do so by contempt proceedings. His conduct was clearly subversive to the administration of justice. There are a few business relations involving a higher trust and confidence than that of an attorney acting as trustee in the handling of money for his client or by order of the court. The basis of this relationship is one of confidence which destroys that basic confidence and trust clearly to obloquy, contempt, censure and reproach. Foremost among the acts destroying the confidence between the public and the bar is the conversion or misuse of a client's funds...

396 Mich at 423.

The New Jersey Supreme Court, in revoking the license of an attorney who had misappropriated client funds, stated:

> Banks do not rehire tellers who borrow depositors' funds. Our professional standards, if anything, should be higher.

In the Matter of Wilson, 409 A.2d 1153, 1156 (NJ 1979).

Equally deserving of strong condemnation is Petitioner's other proven misconduct. Petitioner, who charged clearly excessive fees, has made an inadequate attempt to repay those fees. He has failed to obey court orders and engaged in a course of fraudulent concealment of his activities by lying to the Attorney Grievance Commission regarding his receipt of the funds.

The courts of this nation have always recognized that honesty is the foundation of the legal profession:

> Honesty is basic to the practice of the law. Clients must be able to rely unquestioningly on the truthfulness of their counsel. A lawyer's word to a colleague at the bar must be the lawyer's bond. A lawyer's representation to the court must be as reliable as a statement under oath.

In re Reback, 513 A2d 226, 231 (D.C. Ct. App. 1986). See also, In re Anson, 730 P.2d 1229 (OR. 1986); In the Matter of Duffy, 697 P.2d 943, 945-46 (N.M. 1985).

Similarly, the Attorney Discipline Board has held in the Matter of Mary E. Gerish, ADB 171-87 (ADB 1989):

> Truth is the cornerstone of the judicial system and the practice of law requires an allegiance and fidelity to truth. . .We believe that revocation of the license to practice law is an appropriate sanction when an attorney violates the fundamental obligation to be truthful.

Petitioner's fundamental inability to appreciate the seriousness of his conduct constitutes a clear and present danger, not only to the public, but to his fellow practitioners whose reputations are now stained by his misconduct. As stated by Justice Whipple, in In the Matter of Mills, 1 Mich. 392, 396 (1850):

> When a license is granted to an attorney, we certify to the world, that he has been 'approved by the court for his good character and learning.' Upon this certificate the public have a right to rely...Should this court, after being officially advised that one of its officers has forfeited the good name he possessed when permitted to assume the duties of his office, still hold him out to the world as worthy of confidence, they would, in my opinion fail in the performance of a duty cast upon them by the public, to see that a power which may be wielded for good for evil is not entrusted to incompetent or dishonest hands. The extreme judgment of expulsion is not intended as a punishment inflicted upon the individual, but as a measure necessary to the protection of the public, who have the right to demand of us, that no person shall be permitted to aid in the administration of justice whose character is tainted with corruption.

Petitioner's three year suspension is far less severe than the discipline imposed in similar cases.

OBJECTION TO INCLUSION OF LEGAL ARGUMENT IN PETITIONER'S APPENDIX

The Petitioner filed a Petition for Writ of Certiorari and an Appendix to the Petition. The first 115 pages of the Appendix contain reproductions of opinions, orders and rules as required by United States Supreme Court Rule 14.1(k). However, following the opinions, orders, and rules, Petitioner has set forth an additional 45 pages of material under the title "Additional Specific Materials Underlying Federal Questions Raised in State Court [see, Sup. Ct. R. 14.1(h) and (k)]". The material Petitioner sets forth on pages 115-160 of his appendix do not include "portions of the record" as required by this Court's rule. These last 45 pages of the Petitioner's Appendix are clearly further legal argument in support

of his Petition for Writ of Certiorari. The presentation of such argument in the Petitioner's Appendix is not proper under the rules of this Court and should have been included in the Petition For Writ of Certiorari. United States Supreme Court Rule 14.1(j) and (k). Moreover, inclusion of an additional 45 pages of argument does not comply with Rule 14.4 and Rule 33 of this Court inasmuch as it exceeds the page limitations set forth in those rules.

The Court should note however, that a portion of this additional legal argument in Petitioner's Appendix is a rehash of arguments set forth in his Petition. Petitioner's further challenge to the master's, hearing panel"s, and Attorney Discipline Board's findings and rulings of misconduct are not based upon violations of any constitutional principles, but simply an attempt on his part to relitigate the facts and charges

of misconduct of which he was found guilty. Such challenges to the sufficiency of the evidence are not a proper subject for review by this Court.

CONCLUSION

Petitioner's claims of error have been fully considered by the Michigan Attorney Discipline Board and the Michigan Supreme Court, who have found Petitioner's claims to be without merit. It is respectfully requested that this Honorable Court deny the Petition for Writ of Certiorari.

Dated: Detroit, Michigan
10-16-91

Jane Shallal
JANE SHALLAL, P-35151
Deputy Grievance Administrator
Counsel of Record for Respondent

Cynthia C. Charles, P-33989
Assistant Deputy Administrator
Attorney Grievance Commission
243 W. Congress, Ste 256
Detroit, MI 48226
(313) 961-6585

Case No. 91-433

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

FLETCHER J. CAMPBELL

Petitioner

vs.

GRIEVANCE ADMINISTRATOR,
STATE OF MICHIGAN,
ATTORNEY GRIEVANCE COMMISSION,

Respondent.

Petition For Writ of
Certiorari To The
Michigan Supreme Court

Respondent's Appendix

JANE SHALLAL
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Counsel of Record for Respondent

APPENDIX INDEX

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POWER OF ATTORNEY AND ASSIGNMENT

FOR A VALUABLE CONSIDERATION I hereby assign to FLETCHER J. CAMPBELL, as authorized and permitted by DR5-103(A)(1), and other provisions, all claims, demands, entitlements, judgments, administrative awards, and the proceeds thereof, and all causes of actions which I now have, and which I may have hereafter for monies being held by the Estate of BESSIE IRWIN and/or its agent(s), servant(s), guardian, conservator, or employee(s) arising out of a Probate Action being Case Number 763,105.

I irrevocably appoint my attorney FLETCHER J. CAMPBELL, or his designee, my attorney-in-fact in the premises, to all acts, matter and things deemed necessary

to desirable by any such authorized person, with full power and authority in my name, or that of the estate for the sole benefit of FLETCHER J. CAMPBELL to sue for, or compromise and to recover and receive all or part of the acquired lien granted by this assignment to secure his attorney fee and/or expenses, which said amount is equal to thirty-three and one-third (33 1/3%) percent of any amounts realized through compromise, suit, judgments, administrative awards, entitlements, and demands.

That such action shall not limit or prejudice my right to recover for the estate's own benefit all sums in excess of those amounts representing the agreed upon reasonable value ot the attorney fees and/or expenses, or other sums to which I may be entitled.

That it is agreed and understood that I may, after execution of this instrument, at any time, seek or obtain other counsel to intercede in the estate's behalf in this cause, that however, even though other counsel is obtained thereafter, I expressly agree that such interest under this assignment is considered vested in the said FLETCHER J. CAMPBELL, and shall not be disturbed or altered in any fashion in terms of fee entitlement in that the said parties have specifically relied upon this mutual understanding in the execution of this instrument and the same is deemed material to the undertaking of this agreement and not mere recital.

That further I hereby appoint and authorized FLETCHER J. CAMPBELL, as my attorney-in-fact to sign, edorse or transfer any drafts or checks received by

the estate, through its conservator hereunder, and deposit same to FLETCHER J. CAMPBELL'S Trust Account to be distributed as herein provided.

DO NOT SIGN THIS DOCUMENT UNTIL YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THE SAME: YOUR SIGNATURE BEING PROOF THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Estate of Bessie Irwin

_____ BY_____

(Ms.) CHERYL PICKENS OPHELIA MASON
It's Guardian,
Conservator and
Assignor

_____

(MRS.) MARETTA MING

This foregoing instrument was acknowledged before me this 26th day of June 1984, by OPHELIA MASON, the Guardian and Conservator or the Estate of BESSIE IRWIN.

_____

NOTARY PUBLIC, MACOMB COUNTY, MICHIGAN

(Acting in Wayne)

MY COMMISSION EXPIRES: 3-18-85

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

Grievance Administrator,
State of Michigan
Attorney Grievance Commission,

Petitioner,

V ADB 133-88; 25-88

Fletcher J. Campbell, P-11544,

Respondent.
_____/

ORDER APPOINTING A MASTER

Considered by the Attorney Discipline Board 333 W. Fort Street, Suite 1260, Detroit, MI

PRESENT: Hanely M. Gurwin, Chairman

The Attorney Discipline Board has received a written request from David I. Rosin, chairman of Wayne County Hearing Panel #11 requesting that the Board appoint a master to take testimony, adduce evidence and report findings to the panel. The Board has considered the panel's request in light of the pleadings filed to

date including the witness lists submitted by the respective parties. The Board is authorized by MCR 9.110(D)(3) to assign a complaint to a master if it appears that the hearing will be a prolonged one and the Board has determined that the appointment of a master would be appropriate and will serve the interests of justice.

NOW, THEREFORE,

IT IS ORDERED that Steven M. Kaplan is hereby appointed a master to conduct hearings as soon as may be practicable.

IT IS FURTHER ORDERED that such hearings shall be conducted at the office of the Attorney Discipline Board, 333 W. Fort Street, Suite 1260, Detroit, MI unless otherwise ordered by the master and

such hearings shall be conducted in conformity with the provisions of MCR 9.115.

IT IS FURTHER ORDERED that the master shall file a report on his decision on the misconduct charges including a certified transcript, pleadings, exhibits, briefs, and findings of fact.

IT IS FURTHER ORDERED that if the master finds that the charge of misconduct is not established by a preponderance of the evidence, he must enter an order dismissing the complaint, in accordance with MCR 9.115(J)(4).

IT IS FURTHER ORDERED that if the master finds that the charge of misconduct is established by a perponderance of the evidence, his report and findings shall be delivered to the hearing panel and the panel shall conduct a separate hearing, as

soon thereafter as practicable, to determine the appropriate discipline, in accordance with MCR 9.115(J)(2).

Attorney Discipline Board

By_____

Hanley M. Gurwin, Chairman

Dated: DEC 23 1988

A TRUE COPY

ATTORNEY DISCIPLINE BOARD

_____

Secretary/clerk

STATE OF MICHIGAN
ATTORNEY DISCIPLINE BOARD

Grievance Administrator
State of Michigan
Attorney Grievance Commission,

Petitioner,

V ADB 133-88; 25-88

Fletcher J. Campbell, P-11544,

Respondent.
_____/

ORDER DENYING RESPONDENT'S MOTION FOR RELIEF FROM THE ORDER APPOINTING MASTER

Considered by the Attorney Discipline Board 333 W. Fort Street, Suite 256, Detroit, MI 48226

PRESENT: Hanley M. Gurwin, Chairman
Remona A. Green, Vice-Chairman
Theodore P. Zegouras, Secretary
Martin M. Doctoroff, Member
Robert S. Harrison, Member
Linda S. Hotchkiss, Member
Patrick J. Keating, Member

The Attorney Discipline Board has considered the respondent's motion for relief from an order issued by the Board on December 23, 1988 appointing Steven M.

Kaplan as a master, and the Board has considered the respondent's memorandum of law in support of that motion. The Board is not persuaded that its appointment of a master was contrary to the powers and duties granted to the Board by MCR 9.110(D)(3). The Board has determined that the Board's minutes and records and pertaining to the appointment of a master constitute confidential files and records of the Board within the meaning of MCR 9.126(D). The Board has determined that the request of the hearing panel for appointment of a master in this case was considered by the Board at a special meeting held on November 9, 1988 at which a quorum was present (Members Gurwin, Green, Zegouras, Doctoroff and Hotchkiss). The Board is not persuaded that maintenance or disclosure of a special "masters list" is required for the Board

to exercise its authority to appoint a master. The Board is not persuaded that Steven M. Kaplan should be disqualified to sit as a master in this case by reason of his employment as an assistant prosecutor for Macomb County.

NOW THEREFORE,

IT IS ORDERED that the respondent's motion for relief from order appointing master is DENIED.

IT IS FURTHER ORDERED that the stay of proceedings issued by the Board on February 1, 1989 is VACATED, effective with the filing of this order.

IT IS FURTHER ORDERED that unless otherwise ordered, the hearing before Master Steven M. Kaplan shall proceed on the scheduled date, Monday, March 6, 1989.

ATTORNEY DISCIPLINE BOARD

By_____

Hanley M. Gurwin, Chairman

Dated: FEB 17 1989

A TRUE COPY

ATTORNEY DISCPLINE BOARD

By_____

Secretary/Clerk

RULE 8.105(D) GENERAL DUTIES OF CLERKS

(D) Notice of Judgments, Orders, and Opinions. Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk to the attorneys of record in the case, in the manner provided in MCR 2.107.

RULE 9.102(A) CONSTRUCTION; SEVERABILITY

(A) Construction. Subchapter 9.100 is to be liberally construed for the protection of the public, and the legal profession and applies to all pending matters of misconduct and reinstatement and to all

future proceedings, even though the alleged misconduct occurred before the effective date of subchapter 9.100. Proceedings must be as expeditious as possible.

RULE 9.103 STANDARDS OF CONDUCT FOR ATTORNEYS

(A) General Principles. The license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court. It is the duty of every attorney to conduct himself or herself at all times in conformity with standards imposed on members of the bar as a condition of the privilege to practice

law. These standards include, but are not limited to, the rules of professional responsibility and the rules of judicial conduct that are adopted by the Supreme Court.

(C) Duty to Assist Administrator. An attorney shall assist the administrator in the investigation, prosecution, and disposition of a request for investigation or complaint filed with or by the administrator.

RULE 9.106 TYPES OF DISCIPLINE; MINIMUM DISCIPLINE; ADMONISHMENT

Misconduct is grounds for:

(1) revocation of the license to practice law in Michigan;

(2) suspension of the license to practice law in Michigan for a specified term, not less than 30 days, with such additional conditions relevant to the established misconduct as a hearing panel, the board, or the Supreme Court may impose, and, if the term exceeds 179 days, until the further order of a hearing panel, the board, or the Supreme Court;

(3) reprimand with such conditions relevant to the established misconduct as a hearing panel, the board, or the Supreme Court may impose;

(4) probation ordered by a hearing panel, the board, or the Supreme Court under MCR 9.121(C);

(5) requiring restitution, in an amount set by a hearing panel, the board, or the Supreme Court, as a condition of an order of discipline;

RULE 9.107 RULES EXCLUSIVE ON DISCIPLINE

(A) Proceedings for Discipline. Subchapter 9.100 governs the procedure to discipline attorneys. A proceeding under subchapter 9.100 is subject to the superintending control of the Supreme Court. An investigation or proceeding may not be held invalid because of a nonprejudicial irregularity or an error not resulting in a miscarriage of justice.

RULE 9.108 ATTORNEY GRIEVANCE COMMISSION

(A) Authority of Commission. The Attorney Grievance Commission is the prosecution arm of the Supreme Court for discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.

(B) Composition. The commission consists of 3 laypersons and 6 attorneys appointed by the Supreme Court. The members serve 3-year terms. A member may not serve more than 2 full terms.

(C) Chairperson and Vice-Chairperson. The Supreme Court shall designate from among the members of the commission a chairperson and a vice-chairperson who shall serve 1-year terms in those offices. The commencement and termination dates for the 1-year terms shall coincide appropriately with the 3-year membership terms of those officers and the other commission members. The Supreme Court may reappoint these officers for additional terms and may remove these officers prior to the expiration of a term. An officer appointed to fill a mid-term vacancy shall serve the remainder of that term and may be reappointed to serve a full term.

(D) Internal Rules.

(1) The commission must elect annually from among its membership a secretary to keep the minutes of the commission's meetings and issue the required notices.

(2) Five members constitute a quorum. The commission acts by majority vote of the members present.

(3) The commission must meet monthly at a time and place the chairperson designates. Notice of a regular monthly meeting is not required.

(4) A special meeting may be called by the chairperson or by petition of 3 commission members on 7 days' written notice. The notice may be waived in writing or by attending the meeting.

(E) Powers and Duties. The commission has the power and duty to

(1) recommend attorneys to the Supreme Court for appointment as administrator and deputy administrator;

(2) supervise the investigation of attorney misconduct, including requests for investigation of and complaints against attorneys;

(3) supervise the administrator and his or her staff;

(4) seek an injunction from the Supreme Court against an attorney's misconduct when prompt action is required, even if a disciplinary proceeding concerning that conduct is not pending before the board;

(5) annually write a budget for the commission and the administrator's office (including compensation) and submit it to the state bar board of commissioners for approval;

(6) submit to the Supreme Court proposed changes in these rules; and

(7) annually submit to the Supreme Court a report summarizing the commission's activities during the past year; and

(8) perform other duties provided in these rules.

RULE 9.110 ATTORNEY DISCIPLINE BOARD

(A) Authority of Board. The Attorney Discipline Board is the adjudicative arm of the Supreme Court for discharge of its exclusive constitutional responsibility to supervise and discipline Michigan attorneys.

(B) Composition. The board consist of 5 attorneys and 2 laypersons appointed by the Supreme Court. The members serve 3-year terms. A member may not serve more than 2 full terms.

RULE 9.113 ANSWER BY RESPONDENT

(A) Answer. Within 21 days after being served with a request for investigation under MCR 9.112(C)(1)(b), the respondent shall file with the administrator a signed, written answer in duplicate fully and fairly disclosing all the facts and circumstances pertaining to the alleged misconduct. The administrator may allow further time to answer. Misrepresentation in the answer is grounds for discipline. The administrator shall provide a copy of the answer and any supporting documents to the person who filed the request for investigation unless the administrator determines that there is cause for not disclosing some or all of the documents.

(B) Refusal or Failure to Answer.

(1) A respondent may refuse to answer a request for investigation on expressed constitutional or professional grounds.

(2) The failure of a respondent to answer within the time permitted is misconduct. See MCR 9.104(7).

(3) If a respondent refuses to answer under subrule (B)(1), the refusal may be submitted to a hearing panel for adjudication.

(C) Attorney-Client Privilege. A person who files a request for investigation of an attonrey waives any attorney-client privilege that he or she may have as to matters relating to the request for the purposes of the commission's investigation. [Amended effective June 1, 1987; February 1, 1991]

RULE 9.115(F)(1) HEARING PANEL PROCEDURE

(F) Prehearing Procedure.

(1) Extensions. If good cause is shown, the hearing panel may grant one extension of time per party for filing pleadings or may grant one adjournment per party of a hearing. Additional requests may be granted by the board. Pending criminal or civil litigation of substantial similarity to the allegations of the complaint is not necessarily grounds for an adjournment.

RULE 9.115(G) HEARING PANEL PROCEDURE.

(G) Hearing Time and Place; Notice.

The board or the chairman of the hearing panel shall set the time and place for a hearing. Notice of a hearing must be served by the board or the chairperson of

the hearing panel on the administrator, the respondent, the complainant, and any attorney of record at least 21 days before the initial hearing. Unless the chairperson otherwise directs, the hearing must be in the county in which the respondent has or last had his or her office or residence. If the hearing panel fails to convene or complete its hearing within a reasonable time, the board may reassign the complaint to another panel or to a master.

RULE 9.117 HEARING PROCEDURE BEFORE MASTER

If the board assigns a complaint to a master, the master shall hold a public hearing on the complaint and receive evidence. To the extent that MCR 9.115 may be applied, it governs procedure before a master. After the hearing, the master shall prepare a report containing

(1) a brief statement of the proceedings,

(2) findings of fact, and

(3) conclusions of law.

The master shall file the report with a hearing panel designated by the board and serve a copy on the administrator and the respondent. Within 14 days after the report is filed, the administrator or the respondent may file objections to the report and a supporting brief. The panel must determine if the record supports the findings of fact and conclusions of law and impose discipline, if warranted. Further proceedings are governed by MCR 9.118.